

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DIGITAL MEDIA SOLUTIONS, LLC

Plaintiff,

vs.

SOUTH UNIVERSITY OF OHIO, LLC,
et al.

Defendant.

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Case No. 1:19-cv-145

JUDGE DAN AARON POLSTER

MAGISTRATE JUDGE THOMAS M.
PARKER

**INTERVENING LANDLORD, TECH PARK 6, LLC’S *CORRECTED*¹
EMERGENCY REQUEST FOR IMMEDIATE ENFORCEMENT
OF ORDER SURRENDERING POSSESSION OF PREMISES**

Intervenor Tech Park 6, LLC (“Tech Park”), by and through its undersigned counsel, DLA Piper LLP (US), makes this emergency request for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), enforcing the terms and conditions of the *Order Surrendering Possession of Premises to Intervening Landlord, Tech Park 6, LLC, Relieving Injunction and Stay as to Leased Premises and the Lease and Related Relief* [Doc. # 406] (the “Surrender Order”),² and granting Tech Park the following relief:

- (i) terminating the Lease and directing the surrender and return of the Leased Premises to Tech Park as of November 12, 2019 at 5:00 p.m. EST;
- (ii) relieving and terminating the injunctive provisions and stays contained in the Receiver Order and the Amended Receiver Order as against Tech Park; and

¹ The prior version of this Request, which appears at Docket No. 451, incorrectly calculates the weekly rent due through the date of this Request and seeks surrender of the Leased Premises as of November 11, 2019 (a date on which this Court is closed). This Corrected Request fixes the calculation error and seeks surrender as of November 12, 2019.

² Initially capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Surrender Order.

- (iii) directing the Receiver to pay to Tech Park (a) all rent required to be paid to Tech Park under the Surrender Order; and (b) the amount of actual fees and expenses incurred by Tech Park in bringing this emergency request based on the Receiver's flagrant violation of the Surrender Order.

In Support of this emergency request, Tech Park respectfully represents as follows:

1. In connection with the proposed sale of substantially all of the assets of the Institute other than certain assets, including the Lease, to the Buyer, Tech Park agreed to allow the Institute to continue to occupy the Leased Premises in anticipation of the Closing Date. Tech Park also agreed to work with the Buyer on a potential written agreement acceptable to Tech Park and the Buyer in their respective sole and absolute discretion for the Buyer to occupy the Leased Premises as of the Closing Date.

2. Such accommodations were predicated on, among other things, recognition of the Receiver's obligation to continue to pay weekly rent to Tech Park. That recognition was confirmed through inclusion of the following provision in the Surrender Order:

In anticipation of the occurrence of the Closing Date, ***the Receiver shall continue to honor its ongoing obligation to pay rent to Tech Park in the amount of \$25,000 per week*** through and including the day on which the Leased Premises are actually surrendered to Tech Park pursuant to Paragraph (2)(a) of this Order.

Surrender Order at ¶ 1 (emphasis added).

3. Notwithstanding Receiver's obligations under the Surrender Order, the Receiver failed to pay rent for use of the Leased Premised for the week of November 4, 2019 (ordinarily, payments are made on Monday of each week for the period from the prior Saturday through Friday of that same week). Telephone calls and emails from Tech Park to the Receiver's staff were ignored. An email from Tech Park's counsel to the Receiver's counsel on Thursday, November 7, 2019, inquiring about the status of the unpaid rent led to the Receiver himself

reaching out to Tech Park's counsel by telephone and providing verbal assurances that the weekly rent payment in the amount of \$25,000 would be paid the following day (on Friday, November 8, 2019).

4. Unfortunately, the Receiver failed to honor that promise. Rent for last week in the amount of \$25,000 remains unpaid and this week's rent is now delinquent. Subsequent efforts to communicate with the Receiver and his counsel over the weekend were disregarded, which led the filing of this emergency request.

WHEREFORE, in furtherance of, and compliance with, the Surrender Order, and all of the foregoing, Tech Park respectfully requests immediate entry of the Proposed Order.

Dated: November 11, 2019

DLA PIPER LLP (US)

/s/ Richard A. Chesley

Richard A. Chesley (OH-0029442)

Jade M. Williams (*pro hac vice* application forthcoming)

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Counsel for Tech Park 6, LLC

CERTIFICATE OF SERVICE

In accordance with Section 1.4 of the Electronic Filing and Procedures Manual of the Northern District of Ohio and Federal Rule of Civil Procedure 5(b)(2)(E), a copy of the foregoing has been served through the Court's filing system on all counsel of record on November 11, 2019.

/s/ Richard A. Chesley
Richard A. Chesley (OH-0029442)